TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1936

No. 63

THE UNITED STATES OF AMERICA, APPELLANT

vs.

THE ACME CAN COMPANY

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF PENNSYLVANIA

FILED MAY 15, 1936

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INDEX

	Original	Print
Record from D. C. U. S., Eastern Pennsylvania	1	1
Docket entries	1	1
Indictment	2	1
Defendant's demurrer to indictment	6	3
Opinion sur demurrer to indictment, Welsh, J	9	4
Order sustaining demurrer	10	4
Petition for appeal	11	5
Order allowing appeal	12	5
Assignments of errors	14	6
Citation and service [omitted in printing]	14a	6
Praecipe for transcript of record	15	6
Supplemental praecipe for transcript of record	15a	7
Stipulation re amendment of statement of jurisdiction	16	7
Clerk's certificate [omitted in printing]	18	9
Statement of points to be relied upon and designation as to printing record	19	9

75336—36

1 In United States District Court, Eastern District of Pennsylvania.

No. 6665. June Term, 1935

UNITED STATES

vs.

THE ACME CAN COMPANY

For United States: Charles D. McAvoy.
For Defendant: J. A. Brown, J. J. Brown, S. B. Cooper.

Docket entries

1935
Sept. 11—True bill.
Sept. 13—Appearance of J. A. Brown, J. J. Brown, and S. B. Cooper for defendant, filed.
Sept. 26—Demurrer filed.
1936
Mar. 6—Argued sur demurrer.
Mar. 11—Opinion, Welsh, J., sustaining demurrer to indictment filed.
Apr. 14—Order of Court sustaining demurrer filed.
Apr. 14—Petition for appeal to Supreme Court of the United States filed.
Apr. 14—Assignments of error filed.
Apr. 14—Order of Court allowing Appeal filed.
Apr. 14—Statement of jurisdiction filed.
Apr. 14—Citation allowed and issued.
Apr. 14—Praecipe for transcript of record filed.
Apr. 22—Affidavit of service of copy of notice of appeal etc. filed.
Apr. 24—Statement of defendant against jurisdiction filed.
May 4—Stipulation of counsel amending statement of jurisdiction and order of Court approving stipulation filed.
May 6—Supplemental praecipe for transcript of record, filed.
May 11—Citation returned "Service accepted" and filed.

2 In United States District Court

[Title omitted.]

Indictment

Filed Sept. 11, 1935

COUNT I

The Grand Inquest of the United States of America, inquiring in and for the Eastern District of Pennsylvania, upon their oaths and affirmations, do present that heretofore, to wit: between the dates of December 20, 1934, and March 5, 1935, and divers dates theretofore and thereafter, at Philadelphia, within the Eastern District of Penn-

sylvania and jurisdiction of this Court, The Acme Can Company, a corporation organized and existing under and by virtue of the laws of the Commonwealth of Pennsylvania and having its principal place of business at Philadelphia aforesaid, did knowingly, wilfully, and unlawfully manufacture a large quantity, to wit: 25,000, more or less, of two-quart metal hampers for fruits and vegetables, which said hampers then and there failed to comply with the Act of Congress of May 21, 1928 (45 Stat. 685, known as the United States Standard Container Act of 1928), in that they were not of any standard
8 size authorized by said Act for hampers for fruits and vegetables and did not come within the tolerances established by the Secretary of Agriculture pursuant to said Act for hampers so standardized, and in that said hampers were manufactured without having submitted the dimension specifications thereof to the Secretary of Agriculture and without having secured the approval of the said Secretary therefor, which facts said defendant then and there well knew;

Contrary to the form of the Act of Congress in such case made and provided and against the peace and dignity of the United States of America.

COUNT II

And the Grand Inquest aforesaid, inquiring as aforesaid, upon their respective oaths and affirmations as aforesaid, do herein further present that heretofore, to wit: between the dates of December 20, 1934, and March 5, 1935, and divers dates theretofore and thereafter, at Philadelphia, in the Eastern District of Pennsylvania and within the jurisdiction of this Court, The Acme Can Company, a corporation organized as aforesaid, did knowingly, wilfully and unlawfully sell for use as containers for fruits and vegetables, certain two-quart metal hampers, to wit: 25,000 more or less, two-quart metal hampers, to L. Resnic and Sons, 232 South Front Street and 131 Dock Street, Philadelphia aforesaid, which said hampers then and there failed to comply with the Act of Congress of May 21, 1928 (45 Stat. 685, known as the United States Standard Container
4 Act of 1928) in that they were not of any standard size authorized by said Act for hampers for fruits and vegetables and did not come within the tolerances established by the Secretary of Agriculture pursuant to said Act for hampers so standardized, which facts said defendant then and there well knew:

Contrary to the form of the Act of Congress in such case made and provided and against the peace and dignity of the United States of America.

Charles D. McAvoy,
(Sgd.) CHARLES D. McAVOY,
United States Attorney.

PHILADELPHIA, PA., September 10, 1935.

6 In United States District Court

[Title omitted.]

Defendant's demurrer to indictment

Filed Sept. 26, 1935

And now, to wit, Sept. 26, 1935, comes The Acme Can Company, defendant in the within cause, by its Attorneys, John Arthur Brown, Joseph J. Brown and Stanley B. Cooper, Esquires, and demurs to the Indictment filed and to both counts thereof, and for grounds of demurrer assigns the following:

1. The manufacture of two quart metal hampers for fruits and vegetables, as alleged in Count I of the Indictment, is not a violation of the Act of Congress approved May 21, 1928 (45 Stat. 685).

2. The sale of two quart metal hampers for fruits and vegetables, as alleged in Count II of the Indictment, is not a violation of the Act of Congress approved May 21, 1928 (45 Stat. 685).

3. The Act of Congress approved May 21, 1928 (45 Stat. 685) applies to hampers for fruits and vegetables of the capacities set forth therein and does not apply to two quart hampers for fruits and vegetables.

7 4. When applied to the facts set forth in the Indictment, the Act of Congress approved May 21, 1928 (45 Stat. 685) is unconstitutional in that—

(a) Under the Constitution of the United States the Congress is without power to fix the size of hampers for fruits and vegetables that may be manufactured for sale or shipment or sold.

(b) Under the Constitution of the United States the Congress is without power to make unlawful the manufacture for sale or shipment or the sale of two quart hampers for fruits and vegetables.

(c) Under the Constitution of the United States the Congress is without power to fix the size of hampers for fruits and vegetables that may be manufactured for sale or shipment or sold in intrastate commerce.

(d) Under the Constitution of the United States the Congress is without power to make unlawful the manufacture for sales or shipment or the sale of two quart hampers for fruits and vegetables in intrastate commerce.

5. The enforcement of the Act of Congress approved May 21, 1928 (45 Stat. 685) would deprive the defendant of liberty and property without due process of law in violation of the Fifth Amendment to the Constitution of the United States.

8 Wherefore, defendant prays that this demurrer to the Indictment and to both counts thereof be sustained.

(Sgd.) JOHN ARTHUR BROWN,
(Sgd.) JOSEPH J. BROWN,
(Sgd.) STANLEY B. COOPER,
Attorneys for The Acme Can Co.

STATE OF PENNSYLVANIA,
County of Philadelphia, ss:

L. F. GIEG, being duly sworn according to law, deposes and says that he is President of the defendant above named; that he is authorized to make this affidavit upon its behalf and that he is advised and believes that the Indictment is insufficient in law and that this demurrer is made in good faith and not merely for purposes of delay.

(Sgd.) L. F. GIEG.

Sworn to and subscribed before me this 25 day of September 1935.

[SEAL] (Sgd.) SEYMOUR S. BEERE,
Notary Public.

My Commission Expires Jan. 31, 1937.

9 In United States District Court

Opinion sur demurrer to indictment

Filed March 11, 1936

WELSH, J.: In view of the similarity between this case and that of the United States of America vs. Charles Resnick and Joseph Resnick, partners, trading as L. Resnick & Sons, June Term, 1935, No. 6688, the opinion filed March 11, 1936, in the latter case controls in this case.

The demurrer to the indictment is sustained.

10 In United States District Court for the Eastern District of Pennsylvania

No. 6665. June Sessions 1935

UNITED STATES OF AMERICA

vs.

THE ACME CAN COMPANY

Order sustaining demurrer

Filed April 14, 1936

And now, to wit: this 14th day of April, 1936, it is hereby Ordered that the Demurrer to the Indictment in the above entitled cause be, and the same is hereby, Sustained and defendant discharged without delay, to which the plaintiff excepts and the exception is allowed.

By the Court:

(S.) WELSH, *J.*

11 In United States District Court

[Title omitted.]

Petition for appeal to the Supreme Court of the United States

Filed April 14, 1936

Comes the United States of America, plaintiff herein and states that on the 11th day of March 1936, a demurrer of the defendant, The Acme Can Company, to each and every count of the Indictment herein was by the Court sustained, and the plaintiff feeling aggrieved at the ruling of said District Court in sustaining said demurrer, prays that it may be allowed to appeal to the Supreme Court of the United States for a reversal of said judgment and order, and that a Transcript of the Record in this cause duly authenticated may be sent to said Supreme Court of the United States.

Petitioner submits and presents to the Court herewith a statement showing the basis of the jurisdiction of the Supreme Court to entertain an appeal in said cause.

UNITED STATES OF AMERICA,
Charles D. McAvoy,
By (S.) CHARLES D. McAVOY,
United States Attorney,
Eastern District of Pennsylvania.

12 In United States District Court

[Title omitted.]

Order allowing appeal to the Supreme Court of the United States

Filed April 14, 1936

This cause having come on this day before the Court on the Petition of the United States of America, plaintiff herein, praying an appeal to the Supreme Court of the United States for a reversal of the judgment herein sustaining a demurrer of the defendant, The Acme Can Company, to each and every count of the Indictment in said cause, and that a duly certified copy of the Record of said cause be transmitted to the Clerk of the Supreme Court of the United States, and the Court having heard and considered said motion, together with plaintiff's statement showing the basis of the jurisdiction of the Supreme Court to entertain an appeal in said cause, the same having been duly filed with the Clerk of this Court, it is, therefore, by the Court Ordered and Adjudged that the plaintiff herein, the United States of America, be, and it is hereby allowed an appeal from the order and judgment of this Court in sustaining the demurrer of the defendant, the Acme Can Company, to the Indictment, to

13 the Supreme Court of the United States, and that a duly certified copy of the record of said cause be transmitted to the Clerk of the Supreme Court.

It is further Ordered that the United States of America be, and it is hereby, permitted a period of forty days from the date hereof in which to file and docket said appeal in the Supreme Court of the United States.

Dated at Philadelphia this 14th day of April, 1936.

By the Court:

(S.) WELSH, *J.*

14 In United States District Court

[Title omitted.]

Assignment of errors

Filed April 14, 1936

Comes now the United States of America, plaintiff herein, by Charles D. McAvoy, United States Attorney for the Eastern District of Pennsylvania, and avers that in the Record proceedings and judgment herein there is manifest error and against the just rights of said plaintiff, in this, to wit:

1. That the Court committed material error against plaintiff in sustaining the demurrer of the defendant, The Acme Can Company, to each and every count of the Indictment.

2. That the Court committed material error against plaintiff in sustaining said Demurrer in holding that the provisions of the Standard Container Act of May 21, 1928, are inapplicable to the sale of two-quart size hampers for fruits and vegetables.

Wherefore, for all of the above information appearing on the face of the record proceedings and judgment herein, plaintiff avers that material error was committed prejudicial to it in this cause, and prays that judgment of the District Court be reversed.

Charles D. McAvoy,
(S.) CHARLES D. MCAVOY,
United States Attorney.

14a [Citation in usual form showing service on Stanley B. Cooper omitted in printing.]

15 In United States District Court

[Title omitted.]

Praecipe for transcript of record

Filed April 14, 1936

To the Clerk, U. S. District Court, Eastern District of Pennsylvania:

The appellant hereby directs that in preparing the Transcript of Record of this cause in the United States District Court for the

Eastern District of Pennsylvania, in connection with its appeal to the Supreme Court of the United States, that you include the following:

1. Indictment.
2. Demurrer.
3. Opinion.
4. Judgment sustaining demurrer.
5. Petition for appeal to the Supreme Court.
6. Statement of Jurisdiction of Supreme Court.
7. Assignment of errors.
8. Order allowing appeal.
9. Notice of service on appellee of Petition for appeal, order allowing appeal, assignment of errors, and statements as to jurisdiction.
10. Citation.
11. Praecipe.

Charles D. McAvoy,
(S.) CHARLES D. McAVOY,
United States Attorney, Eastern District of Pennsylvania.
Counsel for Appellant.

15a In United States District Court

[Title omitted.]

Supplemental praecipe for transcript of record

To the Clerk U. S. District Court Eastern District of Pennsylvania:

The appellant hereby directs that in preparing the Transcript of Record of this cause in connection with its appeal to the Supreme Court of the United States, that you include the following:

Stipulation of counsel filed May 4, 1936.

Charles D. McAvoy,
(Sdg.) CHARLES D. McAVOY,
United States Attorney.

16 In United States District Court

[Title omitted.]

Stipulation re amendment of statement of jurisdiction

Filed May 4, 1936

And now, to wit: this 28th day of April 1936, it is hereby Stipulated and Agreed by and between Charles D. McAvoy, United States Attorney for the Eastern District of Pennsylvania, counsel for the plaintiff, and Stanley B. Cooper, Esquire, counsel for the defendant above named, as follows:

1. That the last paragraph on page two of the "Statement of Jurisdiction" be amended Nunc Pro Tunc to read as follows:

"The Indictment in this case is in two separate counts, each of which counts is based upon Sections 1 and 5 of the Standard Container Act of 1928 (United States Code Title 15, Secs. 257 and 257 (d), and charges in substance that the defendant, The Acme Can Company, on the days named, did knowingly, wilfully, and unlawfully manufacture and sell for fruits and vegetables, certain two-quart metal hampers which did not comply with the provisions of the Standard Container Act of May 21, 1928, in that they were not of any standard size authorized by the Act for hampers for fruits and vegetables and were not within any tolerances established by the Secretary of Agriculture pursuant to the Act for hampers so standardized. A Demurrer to the Indictment was filed by the defendant, The Acme Can Company, and at the hearing thereof the Court construed the provisions of the Statute as being inapplicable to the manufacture and sale of two-quart size hampers for fruits and vegetables. In its written opinion, the court held that the Act makes neither provision nor penalty for using a container of less than one-eighth (four quarts) of a bushel. The Court further held that the constitutionality of the Act was not involved and that the sustaining of the demurrer was not based on the intra-state character of the business."

17

2. That the second paragraph of the Assignment of Errors be Amended Nunc Pro Tunc to read as follows:

"That the Court committed material error against plaintiff in sustaining said Demurrer in holding that the provisions of the Standard Container Act of May 21, 1928, are inapplicable to the manufacture and sale of two-quart size metal hampers for fruits and vegetables."

This Stipulation is entered into without prejudice to the right of the defendant above named to question the correctness of the Statement of Jurisdiction as amended, or to object to the time within which the appeal was taken.

Charles D. McAvoy,
(Sgd.) CHARLES D. MCAVOY,
United States Attorney.

Stanley B. Cooper,
(Sgd.) STANLEY B. COOPER,
Attorney for Defendant.

Approved by the Court:
(Sgd.) WELSH, *J.*

18 [Clerk's Certificate to foregoing transcript omitted in printing.]

19 In Supreme Court of the United States

Statement of points relied upon and designation of entire record for printing

Filed May 20, 1936

Pursuant to Rule 13, Par. 9, of this Court, the Appellant states that it intends to rely on all of the points in its assignment of errors.

The appellant deems the entire record, as filed in the above entitled cause, necessary for the consideration of the points relied upon.

STANLEY REED,
Solicitor General.

Service acknowledged May 21, 1936.

JOHN ARTHUR BROWN,
Counsel for Appellee.

[File endorsement omitted.]

(Endorsement on cover:) File No. 40,590. E. Pennsylvania, D. C. U. S. Term No. 63. The United States of America, appellant, vs. The Acme Can Company. Filed May 15, 1936. Term No. 63 O. T. 1936.

U. S. GOVERNMENT PRINTING OFFICE: 1936